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## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1947

No. 530

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HAZEL E. BRIGGS, AS ADMINISTRATRIX OF THE  
GOODS, CHATTELS AND CREDITS WHICH WERE  
OF RALPH BRIGGS, DECEASED, PETITIONER,

vs.

THE PENNSYLVANIA RAILROAD COMPANY

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT

---

PETITION FOR CERTIORARI FILED JANUARY 16, 1948.

CERTIORARI GRANTED FEBRUARY 16, 1948.



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

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HAZEL E. BRIGGS, AS ADMINISTRATRIX OF THE  
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OF RALPH BRIGGS, DECEASED, PETITIONER,

vs.

THE PENNSYLVANIA RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 1, 1948.





[fol: 1]

**UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE SECOND CIRCUIT**

Civil 26—303

**HAZEL E. BRIGGS, as Administratrix of the Goods, Chattels  
and Credits Which Were of Ralph Briggs, Deceased,  
Plaintiff-Appellee,**

**against**

**THE PENNSYLVANIA RAILROAD COMPANY, Defendant-  
Appellant**

**STATEMENT UNDER RULE XV**

This action was commenced on June 30, 1944, under the title Hazel E. Briggs, as Administratrix of the Goods, Chattels and Credits which were of Ralph Briggs, deceased, plaintiff, against The Pennsylvania Railroad Company, defendant. Louis J. Carruthers was substituted as attorney for the defendant in place and stead of Burlingham, Veeder, Clark & Hopper by order of the District Court, for the Southern District of New York, on May 16, 1946.

Defendant's answer was served on August 10, 1944. Trial was held before Honorable Frederick A. Bryant, and a jury, in the United States District Court for the Southern District of New York on the 14th day of February, 1945.

The defendant admitted liability, conceding that the plaintiff was entitled to damages if the court had jurisdiction. The jury returned a verdict in favor of the plaintiff for \$42,500. At the conclusion of the plaintiff's case the defendant had moved to dismiss the complaint on the ground that the plaintiff, as a foreign administratrix, had [fol: 2] no capacity to maintain the action. The defendant renewed this motion at the conclusion of the entire case and also moved for a directed verdict in its favor. On these motions decision was reserved, and the Court, on April 19, 1945, ordered the complaint dismissed and directed judgment to be entered for the defendant on the ground that the plaintiff, as a foreign administratrix, had no capacity to maintain the action. On May 28th, 1945, the Court denied a motion by the plaintiff to vacate the order dismissing the complaint. Thereafter the plaintiff appealed to this Court

from the order and judgment of the District Court and on January 7, 1946, this Court handed down a decision reversing the judgment of the District Court and held that the plaintiff did have capacity to maintain the action. By mandate dated January 23, 1946, it was directed that judgment be entered for the plaintiff on the verdict in accordance with the opinion of this Court. Thereupon, on January 28, 1946, judgment was entered for the plaintiff in the amount of \$42,500, with accrued interest from the date of verdict to the date of entry of judgment in the sum of \$2,429.58, and costs of \$179.02, making a total of \$45,108.60.

The defendant moved to resettle the judgment striking out the item of interest from the date of verdict to the date of entry of judgment, January 28, 1946 (the sum of \$2,429.58) and to reduce the total amount of the judgment from \$45,108.60 to \$42,679.02. On March 5, 1946, Honorable John W. Claney, in a memorandum decision, denied defendant's motion, and an order to that effect was entered on March 15, 1946.

The defendant served and filed its notice of appeal on April 22, 1946, appealing from that part of the judgment representing the item of interest from the date of verdict to the date of entry of judgment and from the order of the Court denying defendant's motion to strike this item from the judgment.

[fol. 3] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF NEW YORK

[Title omitted]

ORDER DISMISSING COMPLAINT—April 19, 1945

The issues in this action having duly come on for trial before Honorable Frederick H. Bryant, District Judge, and a jury, at a Stated Term of this Court, appointed for the hearing of jury cases on February 14, 1945, and the allegations and proofs on the part of the respective parties having been fully heard and considered, and defendant having moved to dismiss the complaint at the end of the plaintiff's case and having renewed said motion and also moved for a directed verdict in its favor at the end of the case, and the Court having reserved decision on said motions and having submitted the case to the jury; and the jury having returned a verdict in favor of the plaintiff

and against the defendant in the sum of \$42,500, and the defendant having moved to set aside the verdict and for the direction of a verdict in its favor; and the Court, after due deliberation, having filed an opinion on April 10, 1945, granting defendant's motion to dismiss the complaint on [fol. 4] the ground that the plaintiff is without capacity to maintain this action,

Now, on the pleadings and proceedings heretofore had herein and, after hearing G. Hunter Merritt, Esq., of counsel, in support of the motions, and Alfred T. Rowe, Esq., attorney for the plaintiff in opposition, and due deliberation having been had, it is, on motion of Burlingham, Veeder, Clark & Hupper, attorneys for the defendant,

Ordered that the verdict herein be and the same hereby is set aside; and it is

Further ordered that the complaint herein be dismissed, on the ground that the plaintiff is without capacity to maintain this action; and it is

Further ordered that judgment be entered in favor of the defendant and against the plaintiff, with costs as taxed in the sum of \$29.75.

Dated: New York, N. Y., April 19th, 1945.

Approved.

Frederick A. Bryant, U. S. D. J.

Judgment rendered.

George J. H. Follmer, Clerk.

May 7, 1945.

[fol. 5] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE SECOND CIRCUIT

MANDATE OF CIRCUIT COURT—January 23, 1946

UNITED STATES OF AMERICA, SS:

The President of the United States of America

To the Honorable Judges of the District Court of the  
United States for the Southern District of New York.

GREETING:

Whereas, lately in the District Court of the United States for the Southern District of New York, before you or some of you, in a cause between Hazel E. Briggs, as Administratrix, etc., and the Pennsylvania Railroad Company, a judg-



ment and an order were entered in the office of the clerk of said Court in the words and figures following, to wit:

"The issues in this action having duly come on for trial before Honorable Frederick H. Bryant, District Judge, and a jury, at a Stated Term of this Court, appointed for the hearing of jury cases on February 14, 1945, and the allegation and proofs on the part of the respective parties having been fully heard and considered, and defendant having moved to dismiss the complaint at the end of the plaintiff's case and having renewed said motion and also moved for a directed verdict in its favor at the end of the case, and the Court having reserved decision on said motions and having submitted the case to the jury; and the jury having returned a verdict in favor of the plaintiff and against the defendant in the sum of \$42,500., and the defendant having moved to set aside the verdict and for the direction of a verdict in its favor; and the Court after due deliberation, having filed an opinion on April 10, 1945, granting defendant's motion to dismiss the complaint on the ground that the plaintiff is without capacity to maintain this action,

Now, on the pleadings and proceedings heretofore had herein and, after hearing G. Hunter Merritt, Esq., of counsel, in support of the motions, and Alfred T. Rowe, Esq., attorney, for the plaintiff in opposition, and due deliberation having been had, it is, on motion of Burlingham, Veeder, Clark & Hupper, attorneys for the defendant,

Ordered that the verdict herein be and the same hereby is set aside; and it is

Further ordered that the complaint herein be dismissed, on the ground that the plaintiff is without capacity to maintain this action; and it is

Further ordered that judgment be entered in favor of the defendant and against the plaintiff, with costs as taxed in the sum of \$29.75.

Dated: New York, N. Y., April 19th, 1945.

Approved:

Judgment rendered.

Frederick A. Bryant, U. S. D. J.

George J. H. Follmer, Clerk.

May 7, 1945."



[fol. 7] "Motion having been regularly made by the plaintiff for an order vacating the order of April 7, 1945, setting aside the verdict in the above entitled action in favor of the defendant and against the plaintiff and dismissing the plaintiff's complaint on the ground of want of capacity to sue, and said motion having regularly come on to be heard at a Term of this Court for the hearing of motions, held in the court rooms thereof in the United States Court House, Foley Square, Borough of Manhattan, City of New York, on May 18th, 1945, and said motion having been denied;

Now, on reading and filing the notice of motion with admission of service on the attorneys for the defendant on May 10, 1945, and the affidavit of Alfred T. Rowe, Esq., attorney for the plaintiff, sworn to May 10, 1945, and having received a memorandum of law filed on behalf of the plaintiff and a memorandum of law filed on behalf of the defendant, and due deliberation having been had, and the Court having filed an opinion on May 23, 1945, denying said motion, it is on motion of Burlingham, Veeder, Clark & Hupper, attorneys for the defendant,

Ordered that the motion be and in all respects hereby is denied.

Dated: New York, N. Y., May 28th, 1945.

Frederick H. Bryant, *U. S. D.* "

[fol. 8] as by the inspection of the transcript of the record of the said Court, which was brought to the United States Circuit Court of Appeals for the Second Circuit, by virtue of an appeal, agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord One thousand nine hundred and forty-five, the said cause came on to be heard before the United States Circuit Court of Appeals for the Second Circuit, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is hereby

Ordered, Adjudged, and Decreed, that the judgment of said District Court be and it hereby is reversed with costs, taxed at the sum of \$100.62; judgment to be entered for

the plaintiff on the verdict in accordance with the opinion of this Court.

You, therefore, are hereby commanded that such further proceeding be had in said cause, in accordance with the decision of this Court as according to right and justice, and the laws of the United States, ought to be had the said appeal notwithstanding.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, the 23rd day of January, in the [fol. 9] year of our Lord One thousand nine hundred and forty-six.

Alexander M. Bell, Clerk of the U. S. Circuit Court of Appeals for the Second Circuit, by A. Daniel Fusaro, Deputy Clerk.

Costs of Appellant	
Clerk	
Printing Record	\$23.70
Attorney	56.92
	20.00
	<hr/>
	\$100.62

United States Circuit Court of Appeals. (Seal.)

[fol. 10] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

JUDGMENT ON REVERSAL BY CIRCUIT COURT—January 28, 1946

The issues in the above entitled action having been brought on for trial before Hon. Frederick H. Bryant and a Jury in the United States District Court at the Court House, located at Foley Square, Borough of Manhattan, City of New York, and both parties having appeared by counsel and the issues having been tried on the 15th day of February, 1945, and the Jury having rendered a verdict in favor of the plaintiff and against the defendant in the sum of \$42,500.00 and the defendant having moved the Court for an order setting aside the verdict and dismissing the complaint which was duly granted on the 7th day of May, 1945, and the plaintiff having filed an appeal, on the 24th day of May, 1945, to the United States Circuit Court of Appeals for the Second Circuit and said Court having

rendered its decision reversing the order and judgment of the District Court and costs having been taxed and the mandate of the Circuit Court of Appeals having been filed in the office of the Clerk of this Court on the 24th day of January, 1946,

Now, on the motion of Alfred T. Rowe, Attorney for the Plaintiff, it is

[fol. 11] Adjudged, that the plaintiff herein recover from the defendant, The Pennsylvania Railroad Company, the sum of	\$42,500.00
with accrued interest thereon from the 15th day of February, 1945 to the date hereof in the sum, to wit:	2,429.58
and costs as taxed in the sum of	179.02
making a total of	\$45,108.60
and that the plaintiff have judgment therefor.	

Judgment signed and rendered the 28th day of January, 1946,

William Connell, Clerk.

[fol. 12] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

NOTICE OF MOTION TO RESETTLE JUDGMENT—February 7, 1946

The defendant moves the Court as follows:

1. To resettle the judgment entered herein by the Clerk of the Court on the 28th day of January, 1946 by striking out the words "with accrued interest thereon from the 15th day of February 1945 to the date hereof in the sum, to-wit: \$2,429.58."

2. To reduce the total amount of the judgment herein from the amount of \$45,108.60 to the sum of \$42,679.02.

Dated: New York, N. Y., February 7, 1946.

Burlingham, Veeder, Clark & Hupper, by Ray Rood Allen, a member of the firm, Attorneys for Defendant, Office & P. O. address, 27 William Street, Borough of Manhattan, City of New York.



[fol. 13] To Alfred T. Rowe, Esq., Attorney for Plaintiff,  
233 Broadway, New York 7, N. Y.

SIR:

Please take notice that the undersigned will bring the above motion on for hearing before this Court at a Stated Term for the hearing of motions to be held in the United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 15th day of February, 1946 at 10.30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Burlingham, Veeder, Clark & Hupper, by Ray Hood Allen, a Member of the Firm, Attorneys for Defendant, Office & P. O. Address, 27 William Street, Borough of Manhattan, City of New York.

[fol. 14] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF NEW YORK

AFFIDAVIT OF G. HUNTER MERRITT, READ IN SUPPORT OF  
MOTION

STATE OF NEW YORK,  
County of New York, ss:

G. Hunter Merritt, being duly sworn, deposes and says that he is an attorney associated in practice with Messrs. Burlingham, Veeder, Clark & Hupper, attorneys for The Pennsylvania Railroad Company, defendant herein, and is familiar with the above action.

That The Pennsylvania Railroad Company, defendant herein, objects to the inclusion in the judgment herein of the sum of \$2,429.58 as accrued interest on the sum of \$42,500 from the 15th day of February, 1945, the date of the verdict herein.

That he attended before the Deputy Clerk of this Court upon the settling of judgment herein on the 28th day of January 1946 and made said objections orally in the presence of Alfred T. Rowe, Esq., the attorney for the plaintiff herein, and stated the grounds therefor.

That this action was brought under Federal Employers Liability Act and deponent is informed and verily believes that under said Act interest is properly recoverable only from the date of judgment.



[fol. 15] That deponent requests the Court to resettle the judgment herein by striking out the words "with accrued interest thereon from the 15th day of January 1945 to the date hereof to the sum of \$2,429.58" and to reduce the total amount of the judgment from \$45,108.60 to the sum of \$42,679.02, and that the resettlement of judgment may provide that the plaintiff recover interest from the date of such resettled judgment only.

G. Hunter Merritt.

Sworn to before me this 7th day of February, 1946.  
James J. Conran, (Notary's stamp illegible).

[fol. 16] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF NEW YORK

AFFIDAVIT OF ALFRED T. ROWE, READ IN OPPOSITION TO MOTION

STATE OF NEW YORK,

County of New York, ss:

Alfred T. Rowe, being duly sworn, deposes and says:

That he is the attorney for the plaintiff in the above action.

That this affidavit is made in opposition to a motion made by defendant to settle the judgment entered in the above action on the 28th day of January, 1946, by striking from said judgment the words "with accrued interest thereon from the 15th day of February, 1945 to the date hereof in the sum, to-wit: \$2,429.58."

This action was brought under the Federal Employers' Liability Act on behalf of the widow and infant children of Ralph Briggs, deceased, to recover damages sustained by them as a result of the death of decedent, caused through the negligence of the defendant while he was in its employ.

The case was tried in the Southern District of New York before a Judge and Jury.

[fol. 17] During the trial the defendant made a motion for a directed verdict; decision on which was reserved by the Trial Judge.

The Jury rendered a verdict in favor of the plaintiff in the sum of \$42,500.00 on the 15th day of February, 1945.

Following the rendition of the verdict the Court granted the motion made by the defendant during the trial, dismissing the complaint and directing that a judgment be entered in favor of the defendant on the ground that plaintiff, being a foreign administratrix, did not have capacity to sue in this Court.

Following the entry of judgment in favor of the defendant, plaintiff appealed with the following result: "Judgment reversed; judgment to be entered for the plaintiff on the verdict."

The judgment sought to be amended was entered on the 28th day of January, 1946.

The plaintiff is entitled to interest as inserted in the judgment as is clearly demonstrated by the Memorandum of Law submitted herewith.

Wherefore deponent prays that the motion be denied.

Alfred T. Rowe.

Sworn to before me this 15th day of February, 1946.  
Edward A. Rogers, Notary Public, N. Y. County  
No. 317.

[fol. 18] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF NEW YORK

ORDER APPEALED FROM, DENYING MOTION TO RESETTLE JUDG-  
MENT—March 15, 1946

The defendant in the above entitled action having duly moved for an order to resettle the judgment entered herein on the 15th day of January, 1946, by striking out the words "with accrued interest thereon from the 15th day of February, 1945 to the date hereof in the sum, to-wit: \$2,429.58";

And said motion having regularly come on to be heard before this Court on the 20th day of February, 1946, in Room 506, United States Court House, Foley Square, Borough of Manhattan, City of New York;

Now, on reading and filing the Notice of Motion dated the 7th day of February, 1946, the affidavit of G. Hunter Merritt, sworn to the 7th day of February, 1946 in support thereof, and the affidavit of Alfred T. Rowe, sworn to the 15th day of February, 1946, in opposition thereto, and due deliberation having been had thereon;

Now, on motion of Alfred T. Rowe, Attorney for the Plaintiff, and on the decision filed herein, it is hereby

Ordered, that the motion to resettle the judgment entered herein on the 20th day of January, 1946 be and the same is hereby in all respects denied.

John W. Clancy, United States District Judge.

Dated, March 15, 1946.

J. D.

[fol. 19] ~~IN~~ UNITED STATES DISTRICT COURT

MEMORANDUM OF DECISION—March 5, 1946

This motion is denied. *La. & Ark. Ry. Co. v. Pratt*, 142 Fed. (2) 847, answers all of defendant's contentions and covers the authorities which are not few. *Murman v. N. Y. N. H. & H. RR.*, 258 N. Y. 447, has nothing to do with this case at all—it does not pretend to touch it, indeed it explicitly says so.

March 5, 1946.

John W. Clancy, U. S. D. J.

Filed, Mar. 5, 1946.

Re M/resettle judgt.—Interest was allowed.

[fol. 20] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF NEW YORK

NOTICE OF APPEAL—April 22, 1946

SIR:

Please take notice that the defendant, The Pennsylvania Railroad Company, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from that part of the judgment (namely, the sum of \$2,429.58) entered herein in the office of the Clerk of this Court on January 28, 1946, in favor of the plaintiff and against the defendant, which represents interest on the verdict from the date of the rendition of the verdict to the date of the entry of said judgment, and from the order of this Court entered March

15, 1946, denying defendant's motion to strike out said item from the said judgment.

Dated: New York, N. Y., April 22, 1946.

Yours, etc., Burlingham, Veeder, Clark & Hupper,  
Attorneys for Defendant, Office & P. O. Address,  
27 William Street, Borough of Manhattan, City of  
New York.

To: Alfred T. Rowe, Esq., Attorney for Plaintiff, 233  
Broadway, Borough of Manhattan, City of New York.

[fol. 21] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF NO OPINION—April 29, 1947

SOUTHERN DISTRICT OF NEW YORK,  
County of New York, ss:

Louis J. Carruthers, being duly sworn, says: I have acted as counsel for defendant herein throughout this cause. No opinion was handed down by Hon. John W. Clancy upon the making of the order appealed from dated March 15, 1946 or upon the motion on which same was based.

Louis J. Carruthers.

Sworn to before me this 29 day of April, 1947. Harry K. Howland, Notary Public, Suffolk County. Cert. filed in N. Y. Co. Clk's No. 542. Cert. filed N. Y. Co. Reg. No. 248-H-8. Commission Expires March 30, 1948.

[fol. 22] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF NEW YORK

STIPULATION AS TO RECORD—April 29, 1947

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated: April 29, 1947.

Alfred T. Rowe, Attorney for Plaintiff. Louis J.  
Carruthers, Attorney for Defendant.

[fol. 23] Clerk's Certificate to foregoing transcript omitted in printing.



[fol. 24] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT, OCTOBER TERM, 1947

No. 16

Argued October 7, 1947. Decided October 30, 1947

Docket No. 20596

**HAZEL E. BRIGGS, as Administratrix of the Goods, Chattels  
and Credits Which Were of Ralph Briggs, Deceased,**  
Plaintiff-Appellee

against

**THE PENNSYLVANIA RAILROAD COMPANY, Defendant-  
Appellant**

Before L. Hand, Swan and Chase, Circuit Judges

Appeal from a Judgment of the District Court for the  
Southern District of New York. Modified.

Alfred T. Rowe, for Plaintiff-Appellee; Anthony San-  
sone, of Counsel.

Louis J. Carruthers, for Defendant-Appellant; The Penn-  
sylvania Railroad Co., William J. O'Brien and Arthur R.  
Douglas, of Counsel.

[fol. 25] CHASE, Circuit Judge:

In *Briggs v. Pennsylvania R. Co.*, 153 F. 2d. 841, we re-  
versed a judgment for the defendant in this case. The  
District Court as directed by our mandate then entered a  
judgment on the verdict for the plaintiff but in addition  
included interest from the date of verdict to the date of  
entry of judgment. The defendant moved to resettle the  
judgment by disallowing such interest. Relying upon  
*Louisiana & Arkansas Ry. Co. v. Pratt*, 5 Cir., 142 F. 2d.  
847, the District Court denied the motion and the defendant  
has appealed.

The nature of the suit and the reasons for our reversal  
of the former judgment are stated in our previous opin-  
ion, with which familiarity will be assumed, and only what  
is needed to present the present issues will be repeated.  
During the trial a motion to dismiss the suit for lack of  
jurisdiction was made by the defendant. The court re-

served decision on the motion and submitted the cause to the jury which, on February 15, 1945, returned a plaintiff's verdict. The motion to dismiss was granted, however, on April 19, 1945, and judgment for the defendant was duly entered. We reversed that judgment on January 7, 1946 and by mandate of January 23, 1946 directed that judgment on the verdict for the plaintiff be entered. We neither did, nor were requested to, give any directions as to interest. On January 28, 1946 the judgment on our mandate was entered for the amount of the verdict and for interest from the date of the verdict as above stated.

Some modification of this judgment is required. The relevant federal statute, 28 U. S. C. A. Sec. 811, provides that interest on judgments, "shall be calculated from the date of the judgment, . . .". The action is based [fol. 26] solely upon the Federal Employers' Liability Act and, being a suit to enforce liability under a federal statute, federal law controls. *Chesapeake & Ohio Ry. Co. v. Kuhn*, 284 U. S. 44; *Bailey v. Central Vermont Ry., Inc.*, 319 U. S. 350. The Measure of damages is fixed by that law. *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U. S. 485. Federal law likewise governs in respect to interest, *Murphy v. Lehigh Valley R. Co.*, 2 Cir., 158 F. 2d 481; *Louisiana & Arkansas Ry. Co. v. Pratt*, *supra*. Since no judgment could have been entered until the motion pending after verdict had been decided by the trial court, no interest can be allowed between the date of the verdict and May 28, 1945 when that motion was decided and the judgment for the defendant was erroneously entered. *Murphy v. Lehigh Valley R. Co.*, *supra*.

The remaining question is whether interest should be allowed from the date a judgment for the plaintiff on the verdict would, in the absence of error in decision, have been entered, viz., the date when the original judgment for the defendant was entered by order of court; or from January 28, 1946 the date when judgment for the plaintiff was actually entered after our mandate went down. And if the latter date is the correct one, we must decide whether we now have any power to amend that mandate to make

<sup>1</sup> *Louisiana & Arkansas Ry. Co. v. Pratt*, *supra*, does not necessarily have to be read to the contrary since it may well be that the date of the verdict there coincided with that of the judgment for the defendant.

the judgment date *nunc pro tunc* that of the original judgment and, if so, whether that power ought to be exercised.

It is true that subsequent events have shown that on the date of the original judgment the plaintiff was entitled to have a judgment entered on the verdict and that this judgment would have borne interest until it was paid. But from a practical standpoint it is equally true that the plaintiff then was "entitled" only to have the trial judge decide the pending motions and direct the entry of such judgment as he fairly determined to be lawful and just. That is exactly what the trial judge did. Thereafter the plaintiff was "entitled" only to take whatever action by way of appellate review the law afforded her. The delay in the entry of the proper judgment was necessary in the sense that time for appellate review was required; it was only after the ordinary appellate proceedings had been completed that the plaintiffs' cause of action had reached the point where her right to a judgment on the verdict was judicially established. That judgment was then promptly entered. The date of its entry became the judgment day from which interest is to be computed under the statute. It was, under the circumstances, the first day when the judgment could have been entered. See *Murphy v. Lehigh Valley R. Co.*, *supra*.

The only judgment which could then lawfully have been entered was, however, one which conformed to the mandate of this court. That directed judgment in the amount of the verdict but made no direction whatever as to interest. When our mandate specifically directs the entry of judgment for a designated amount, the District Court is without power to enter judgment for a different sum. *In re Washington & Georgetown R. Co.*, 140 U. S. 91; *Thornton v. Carter*, 109 F. 2d. 316. So here the error was not alone in the conclusion of interest on the verdict to the date of the original judgment but extended also to the inclusion of interest on the verdict up to the date of the judgment on the mandate.

For the present purposes we will assume that we could, and had the matter been timely called to our attention, would have directed by our mandate the entry of judgment for the plaintiff *nunc pro tunc* as of the day on which the original judgment for the defendant was entered. See *Ireland v. Connecticut Co.*, 112 Conn. 452, 152 Atl. 614. But see, *Reed v. Howbert*, 10 Cir., 77 F. 2d. 227; 1 Freeman on

[fol. 28] Judgments (4th Ed.) sec. 68. It is now too late, however, to recall the mandate and do that. The term in which it went down passed without any application having been made for its recall and amendment. While we have the power in this, the succeeding term to act to that end, *Hazel-Atlas Glass Co. v. Hartford Co.*, 322 U. S. 238, it is only in the most exceptional of circumstances, as where there has been a fraud upon the court, that it should be exercised. These circumstances are not present here. *Nachod v. Engineering & Research Corp.*, 2 Cir., 108 F. 2d 594; *Dobson v. United States*, 2 Cir., 31 F. 2d 288, certiorari denied 278 U. S. 653. In so far as *Blair v. Durham*, 6 Cir., 139 F. 2d 260, and *Louisville & Arkansas Ry. Co. v. Pratt*, *supra*, may be in conflict herewith, we decline to follow them.

The judgment is modified to exclude all interest upon the amount of the verdict up to the date judgment was entered and, as so modified, it is affirmed.

[fol. 29] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 30th day of October, one thousand nine hundred and forty-seven.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

HAZEL E. BRIGGS, Admrx., etc. of Ralph Briggs, Dec'd.,  
Plaintiff-Appellee,

v.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant-  
Appellant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court



be and it hereby is modified with costs, and, as so modified, it is affirmed in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 30] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Hazel E. Briggs, Admnx., etc. v. Pennsylvania R. R. Co. 16. Judgment. United States Circuit Court of Appeals, Second Circuit. Filed Oct. 30, 1947. Alexander M. Bell, Clerk.

[fol. 31] Clerk's Certificate to foregoing transcript omitted in printing.

(4346)



[fol. 29] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1947

No. 530

HAZEL E. BRIGGS, as Administratrix of the Goods, Chattels  
and Credits Which Were of Ralph Briggs, Deceased,  
Petitioner,

vs.

THE PENNSYLVANIA RAILROAD COMPANY

ORDER ALLOWING CERTIORARI—Filed February 16, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5101)